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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ARUTYUN DEMIRCHYAN,

Plaintiff and Respondent,

v.

ARUS GYULBUDAKYAN,

Defendant and Appellant.

B243906

(Los Angeles County
Super. Ct. No. LC091940)

Appeals from a judgment of the Superior Court of Los Angeles, Huey P. Cotton,
Judge. Reversed with directions.

John H. Thaler for Defendant and Appellant.

Jacob Shahbaz Law Group and Jacob Shahbaz for Plaintiff and Respondent.

Appellant, Arus Gyulbudakyan, challenges the trial court's denial of her motion to set aside a judgment. Because the trial court erred in its determination that the confidential relationship between the parties had terminated at the time the stipulation that formed the basis for the challenged judgment was entered, we reverse and remand for further consideration of appellant's claim for equitable relief.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Gyulbudakyan married Arutyun Demirchyan in 2001. On November 25, 2008, Gyulbudakyan filed a petition for dissolution of that marriage. On December 18, 2008, the court issued a domestic violence restraining order against Demirchyan, giving appellant sole custody of the children and possession of the family residence. Demirchyan filed his response in the dissolution proceeding on February 29, 2009.

On August 19, 2009, a marital settlement agreement was fully executed by the parties and their respective counsel. The parties agreed to the division of separate and community property, including two parcels of developed real property in California, to child custody and to child support payable to Gyulbudakyan, among other issues. The agreement was not submitted to the court for entry of judgment, but, on October 6, 2010, Demirchyan's counsel sought to move forward on the agreement. At the same time Demirchyan sent payment for arrearages in child support consistent with the agreement, and for an asset that was to have been appellant's pursuant to the agreement, but which had been destroyed. Gyulbudakyan was detained by the federal authorities three days later, in an unrelated matter. On November 19 of that year, Demirchyan filed an Order to Show Cause in the family law matter, seeking to set aside the domestic violence restraining order and to file an amended response in the proceeding. Ten days later, this civil action was filed by Demirchyan and his affiliated entities.

Appellant remained in custody until October 2011. In March 2011, without representation by counsel, she signed a stipulation for judgment in the dissolution proceeding, which Demirchyan presented to her. That stipulation contained dramatic changes to the terms of the previous marital settlement agreement; among other

alterations, the stipulation did not address in any manner the ownership of the two items of California real property which had been allocated between the parties in the marital settlement agreement.¹ Demirchyan presented that stipulation to the court for judgment; the court entered judgment on April 26, 2011. Prior to that time, on April 21, again unrepresented by counsel, appellant had signed a settlement agreement in this action presented to her by Demirchyan, in which she admitted wrongdoing for all matters alleged in the complaint, agreed to make a payment of \$2,475,000 within 21 days, and gave respondent power over all of her assets, accounts, and credit cards. The agreement was not signed by respondent. The court entered judgment on the basis of the agreement in this action on June 8, 2011.

On May 11, 2012, appellant, now represented by counsel, filed a motion to set aside the judgment in this action, asserting extrinsic fraud, mistake, and breach of fiduciary duty. Demirchyan opposed the motion.

The trial court found that appellant had knowledge of the pendency of the civil proceedings, had voluntarily agreed to the judgment, and had taken the risk of proceeding without counsel.² Having requested supplemental briefing on the issues concerning the confidential relationship between spouses and fiduciary duty, the court concluded that the parties were legally separated, and their assets distributed, prior to the stipulated judgment. While acknowledging that the judgment was inequitable—“I mean that is not even debatable”—the court found the existence of a confidential relationship necessary to reach that issue. The court concluded, however, there was no longer a confidential relationship between the parties and thus, no fiduciary duty owed by Demirchyan. Appellant filed a timely appeal.

¹ Although respondent asserted at the trial court, and in this court, that appellant was represented by counsel, there is no signature line for counsel in the agreement, and counsel testified by declaration that he did not represent her at that time.

² The record does not demonstrate that appellant, in custody during this entire period, had the ability or resources to retain counsel. Appellant asserts that respondent obtained counsel for her in the criminal matter only after she signed the stipulation.

DISCUSSION

While California law embodies a strong public policy in favor of the stability of judgments, equitable relief is available where a sufficient showing of extrinsic fraud or mistake is made. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975 (*Rappleyea*).) Where, as here, the judgment is entered on the basis of an agreement between spouses, the validity of that underlying agreement is a primary issue. The trial court did not consider that issue, despite the demonstrated inequity of the judgment, having concluded all aspects of the marriage including the fiduciary relationship between the spouses, had terminated. Because we conclude the trial court erred in that determination, we reverse and remand.

We review a trial court's determination to grant or deny equitable relief for abuse of discretion (*Rappleyea, supra*, 8 Cal.4th 975 p. at 978). Where, as here, the decision turns on facts determined by the trial court, we consider whether that determination rests on substantial evidence. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911.)

I. Fiduciary Duty Under The Family Code

The Family Code imposes on spouses a fiduciary duty, creating a confidential relationship prohibiting either from taking unfair advantage of the other. Family Code, section 721.³ This fiduciary duty continues until the assets are both divided and distributed between the parties. (§ 1100, 2102; *In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252, 1270 [the confidential relationship continues until final distribution of assets].)

One effect of this duty, critical to the disposition of this case, is the presumption of undue influence that attaches to agreements between the parties. (*In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 84-85.)⁴ When, as here, one spouse receives an

³ All further references, unless otherwise indicated, are to the Family Code.

⁴ In *Kieturakis, supra*, 138 Cal.App.4th 56, the court found that the presumption of undue influence did not apply because the agreement in question had been reached through mediation; the action was filed almost two years after the judgment was entered;

advantage in a transaction, there is a legal presumption that that spouse exercised undue influence, which, if not overcome, invalidates the transaction. “It long has been the rule that ‘[w]hen an interspousal transaction advantages one spouse, “[t]he law, from considerations of public policy, presumes such transactions to have been induced by undue influence.’” [Citation.]” (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 28, quoting *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 293, further citation omitted, superseded by statute on other grounds; *In re Marriage of Cadwell-Faso & Faso* (2011) 191 Cal.App.4th 945, 956.) The showing of advantage is made if one spouse’s position is improved. (*In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 628-629 & 632 (*Mathews*); see also *In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1519.) “[W]here one spouse admittedly secures an advantage over the other, the confidential relationship will bring into operation a presumption of the use and abuse of that relationship by the spouse obtaining the advantage.” (*In re Marriage of Baltins* (1989) 212 Cal.App.3d 66, 88.)

The burden is on the advantaged spouse to show the absence of undue influence. (*Mathews, supra*, 133 Cal.App.4th at p. 624.) Among the factors that the advantaged spouse must establish by a preponderance of the evidence are that the agreement was free and voluntary, and was made with full knowledge of all facts and with a complete understanding of the effect of the agreement. (*Id.* at pp. 630-631.)

and the parties acknowledged in the agreement that they were aware of their mutual fiduciary duties, had exchanged disclosures, and had freely entered the agreement. (*Id.* at pp. 86-91.) Here, only one of those factors is present: the language in the agreement that the agreement was entered freely; there was no acknowledgment of mutual fiduciary duty.

II. The Record Does Not Provide Substantial Evidence of Termination of the Confidential Relationship

In this case, there is no dispute that Demirchyan's position was improved by the agreement that formed the basis of the judgment; the trial court indicated during the hearing that the agreement was, without question, inequitable and harsh.⁵ In the agreement, Demirchyan, on behalf of himself and his related entities, obtained a confession of wrongdoing to all fourteen counts of the complaint against appellant, possession of all of appellant's accounts and credit cards, and a judgment of over two million dollars. Demirchyan placed no evidence in the record that demonstrates that he would have been able to obtain that relief had the matter been litigated.

There is also no substantial evidence in the record that the marital assets had been distributed at the time Demirchyan obtained appellant's signature on the agreement. While she had earlier signed, apparently without representation of counsel, a stipulation that permitted the court to enter judgment in the family law proceeding, the judgment dividing the assets was not entered until after the agreement in this civil litigation was signed. Moreover, even if the family law stipulation alone were deemed a distribution of the assets, it too required Demirchyan to demonstrate the absence of undue influence, as it too provided significant advantages to him in contrast to the earlier marital settlement agreement; he obtained almost all of the identified assets of the parties, full custody of the children, and was relieved of the obligation of spousal support.⁶

⁵ Respondent argues to this court that there was no unfair advantage obtained, based on the same arguments he presented to the trial court concerning the potential value of this litigation, but does not assert that substantial evidence does not support the trial court's conclusion and has, as a result, waived that argument. "[P]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's sanction issue as waived." (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.)

⁶ The briefs in this matter indicate that the stipulation in the marital case was also the subject of a challenge to its enforceability, which had not been determined at the time the trial court ruled. The trial court did not consider the validity of that agreement.

The trial court, based on its finding that the confidential relationship had terminated, did not consider whether Demirchyan had overcome the presumption of undue influence. It did not determine whether appellant had full knowledge of the relevant facts and of the effect of the agreement. The court made no finding concerning duress, although it did conclude that appellant had admitted voluntarily agreeing to the stipulation, based on two paragraphs in her declaration which described the circumstances of her signature. Appellant did present to the court evidence that would be relevant to the issue of duress, both in those paragraphs and in her testimony concerning threats made by respondent with respect to the children, and the disability related to her imprisonment. (See, *e.g. Humes v. MarGil Ventures, Inc.* (1985) 174 Cal.App.3d 486, 499 [imprisonment is a disability which should be considered in determining whether request for relief was timely].) Respondent challenges the credibility of those claims of duress; as the trial court did not reach them as a result of its finding on fiduciary duty, that issue of credibility is for the trial court to determine in the first instance.⁷ We remand for that determination.

⁷ In addition to arguing that there has been no unfairness, Respondent asserts, based on cases that predate Family Code sections, 721 and 1102, that the fact of the dissolution litigation terminates the confidential relationship between the parties. As set forth above, that is no longer the law in California. Respondent further argues that appellant did not prove duress or undue influence, again ignoring the presumption of undue influence imposed by the law; in addressing undue influence, respondent also fails to acknowledge that the trial court declined to reach that issue. In light of our disposition, we need not reach the other issues raised by respondent.

DISPOSITION

The order denying the motion to set aside the judgment is reversed and the matter remanded for the trial court to determine the credibility of appellant's duress claims, and whether respondent has overcome the presumption of undue influence. Appellant is to recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.